SUPREME COURT OF THE UNITED STATES.

No. 209.

A. L. MARSHALL, AND C. S. SILVER, ADMINISTRATOR, &c., OF FINICE CARUTHERS, DECEASED, PLAINTIFFS IN ERROR,

vs.

ANDREW J. KNOTT.

IN ERROR TO THE SUPREME COURT OF THE STATE OF OREGON.

TRANSCRIPT. MULTNOMAH COUNTY.

ANDREW J. KNOTT, PLAINTIFF, RESPONDENT,

vs.

A. L. MARSHALL, AND C. S. SILVER, ADMINISTRATOR, DE BONIS NON, OF THE ESTATE OF FINICE CARUTHERS, DECEASED, DEFENDANTS, APPELLANTS.

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1 STATE OF OREGON,
Multnomah county, ss:

In the circuit court of the State of Oregon, for the county of Multnomah.

ANDREW J. KNOTT, plaintiff,
vs.
A. L. MARSHALL, defendant.

Be it remembered, that on the twelfth (12) day of May, A. D. 1865, the plaintiff in the above-entitled cause, by A. Holbrook, his attorney, filed in the office of the clerk of said court the following complaint, to wit:

Complaint.

In the circuit court of Oregon, for Multnomah county.

ANDREW J. KNOTT, plaintiff,
vs.
A. L. MARSHALL, defendant. } Complaint.

The plaintiff sayes he is the owner in fee, and lawfully entitled to the present possession of the following discribed real estate, situated in Multnomah county, State of Oregon, to wit:

The lot numbered two of section nine, and the lots numbered eight and nine of section ten, in township one, south of range one,
2 east of the Willamette meredian, as described upon the government plats an surveys of the public lands in Oregon; the said lots containing one hundred and forty-seven acres and $\frac{5}{10}$ of an acre, and that the said defendant wrongfully withholds the same from him to the danage of the plaintiff in the sum of two thousand dollars. Wherefore, the plaintiff asks judgment for the recovery of the possession of the said real property, and for said damages, and also for his costs and disbursements.

By A. HOLBROOK,
Pl'ff's Att'y.

[50 cent r. stamp.]

STATE OF OREGON, *Multnomah county, ss:*

Andrew J. Knott, plaintiff, being duly sworn, says the foregoing complaint is true, as he verily believes.

A. J. KNOTT.

Subscribed and sworn to this 12 day May, 1865.
H. C. COULSON, *Clerk.*

And afterwards, to wit, on the 13th day of May, A. D. 1865, the following summons and sheriff's return endorsed thereon, were filed in the office of the clerk of said court, to wit:

Summons.

In the circuit court of the State of Oregon, for Multnomah county.

To the defendant:

Take notice, that unless you appear in the circuit court of the State of Oregon, for Multnomah county, and answer the within complaint therein filed against you, within ten days after service of this
3 notice upon you, the plaintiff will apply to the court for relief demanded therein.

Portland, 11th May, 1865.

A. HOLBROOK,
Pl'ff's Att'y.

Endorsement of service.

STATE OF OREGON, *Multnomah county, ss:*

I hereby certify, that I served the within summons on the within-named defendant, A. L. Marshall, in the city of Portland, in Multnomah county, on the 13th day of May, A. D. 1865, by delivering to him a copy thereof, together with a copy of the complaint prepared and certified to by the plaintiff's attorney.

JACOB STITZEL,
Sheriff.

And afterward, to wit, on the 15th day of May, A. D. 1865, defendant, by Mitchell & Dolph, his attorneys, filed in the office of the clerk of said court the following demurrer to complaint in the above-entitled cause, to wit:

Demurrer by def't.

In the circuit court of the State of Oregon, for the county of Multnomah.

ANDREW J. KNOTT, plfft.,
vs.
A. L. MARSHALL, def't.

And now comes the def't, by his att'ys, and demurres to pl'f's complaint for the reasons: 1st, It does not state facts sufficient to
4 constitute a cause of action; 2d, It does not state facts sufficient to give the court jurisdiction.

MITCHELL & DOLPH,
Att'ys for Def't.

And afterwards, at the June term of the circuit court of the State of Oregon, for the county of Multnomah, begun and held at the court-house in the city of Portland, in said county, on Monday, the twelfth (12) day of June, A. D. 1865, before the Hon. Erasmus D. Shattuck, sole judge thereof, to wit, on the third day of July, A. D. 1865, being the nineteenth (19) judicial day of said term, this cause among others was continued till August special term.

And afterwards, at a special term of the circuit court of the State of Oregon, for the county of Multnomah, began and held at the court-house, in the city of Portland, in said county, on Tuesday the first (1) day of August, A. D. 1865, before the Hon. Erasmus D. Shattuck, sole judge thereof, to wit, on the twelfth (12) day of August, A. D. 1865, being the sixth (6) judicial day of said special term, the following order in said above-entitled cause was made by said court, to wit:

5 *Order overruling demurrer.*

A. J. KNOTT
vs.
A. L. MASLHALL.

Comes the plaintiff, by Holbrook & Strong, his att'ys, and the defendant, by Mitchell & Dolph, and Upton, his att'ys, and the court having heard argument of counsel on demurrer to complaint, heretofore filed in this cause, it is ordered that the said demurrer be, and the same is overruled, and defendant has leave till 15th to file answer herein.

(Signed) ERASMUS D. SHATTUCK,
Judge.

And afterwards, at the term aforesaid, of the court aforesaid, before the judge aforesaid, to wit, on the nineteenth (19) day of August, A. D. 1865, being the seventh judicial day of said special term, this cause, among others, was continued until the next term of this court.

Be it remembered, that at a term of the said circuit court, begun and held at the court-house in the city of Portland, in said county, on Monday, the thirteenth (13) day of November, A. D. 1865, before the Hon. Erasmus D. Shattuck, sole judge of said court, and on Wednesday, the thirteenth (13) day of December, A. D. 1865, being the twenty-second (22) judicial day of said term, the following proceedings were had in the above-entitled action, to wit:

6 Comes the plaintiff, by Holbrook & Strong, his att'ys, and the defendant appearing by Micthell & Dolph, his att'ys, and defendant, Marshall and C. S. Silver, adm. of estate of F. Caruthers, dec'd, allowed to be made a party defendant herein, upon motion filed herein file answers herein as follows, to wit:

Answer of A. L. Marshall.

In the circuit court of the State of Oregon, for the county of Multnomah.

ANDREW J. KNOTT, pl'ff,
vs.
A. L. MARSHALL, def't.

The defendant, A. L. Marshall, for answer, herein denies that plaintiff is the owner in fee of the land discribed in complaint, or any part thereof, or that he is entitled to the possession thereof; denies

that he, def't, wrongfully or unlawfully withholds the same from pl'ff to his damage, two thousand dollars, or any other sum whatever.

Defendant for further answer avers, that he is in possession of the said premises as the tenant of C. S. Silver, the administrator, de bonis non, of the estate of Finice Caruthers, which estate is the owner in fee of said lands and premises; that said Silver resides in the city of Portland; that Finice Caruthers was at the time of his
7 death, in 1860, the owner in fee of said discribed premises in complaint specified; that said C. S. Silver is his duly appointed and qualified administrator, and, as such, entitled to the possession of said premises at the expiration of def't's lease, which is April 1st, 1866; that said Finice Caruthers, in his lifetime, made valuable and permanent improvements on said premises while holding the same, in good faith, of the value of three thousand dollars:

Wherefore, defendant prays that said Silver be admitted to defend this action, and he prays judgment for costs and disbursements.

UPTON, & MITCHELL & DOLPH,
for Pl'ffs.

STATE OF OREGON, *County of Multnomah, ss:*

A. L. Marshall, being duly sworn says the foregoing answer is true, as I verily believe.

A. L. MARSHALL.

Subscribed and sworn to before me, August 15th, 1865.
H. C. COULSON, *Clerk.*

Endorsed: Filed August 15th, 1865, H. C. Coulson, clerk.

Answer of C. S. Silver, defendant.

In the circuit court of the State of Oregon, for the county of Multnomah.

ANDREW J. KNOTT, plaintiff,
vs.
A. L. MARSHALL, defendant.

8 C. S. Silver, administrator, de bonis non, of the estate of Finice Caruthers, dec'd, by leave of court, being admitted to defend herein as landlord of defendant, A. L. Marshall, for answer herein, denies that the plaintiff is the owner, in fee or otherwise, of the tract of land or premises described in complaint, or any part thereof, or that he is entitled to the possession thereof, or any part of the same; denies that the defendant, Marshall, or this defendant, wrongfully or unlawfully detains the same from the possession of the plaintiff to his damage, two thousand dollars, or any other sum whatever.

Defendant for further and separate answer herein avers, that one Finice Caruthers, at the time of his decease in 1860, was the owner in fee of the said lands and premises described in complaint, and had

an estate of inheritance therein; that said Caruthers died seized of the same, intestate and without heirs, and your defendant was duly appointed administrator, of his estate and is duly qualified and now acting as such administrator, and the said estate is now the owner in fee of the said premises, and said defendant, A. L. Marshall is
9 in possession of said premises as the tenant of this defendant; that his lease expires April first, A. D. 1866.

That as such administrator, this defendant is entitled to the possession of said premises; that during the lifetime of said Finice Caruthers, and while in possession of said premises, claiming the same in good faith under color of title, he mad valuable and permanent improvements thereon, to the value of three thousand dollars, which am't def't prays to of set against the claim of pl'ffs for damages.

Wherefore, def't Silver as such administrator, prays judgment for costs and disbursements.

UPTON & MITCHEL & DOLPH,
Atty's for def't C. S. Silver, Adm'r.

STATE OF OREGON, *County of Multnomah, ss:*

I, C. S. Silver, administrator of the estate of Finice Caruthers, dec'd, def't herein, being duly sworn say the foregoing answer is true, as I verily believe.

C. S. SILVER.

Subscribed and sworn to before me, August 15th, 1865.
H. C. COULSON, *Clerk.*

Based upon this answer, I move the court for leave, upon the part of C. S. Silver, adm'r of the estate of Finice Caruthers, dec'd, to appear and defend this action as a party def'ts, and for such
10 purpose to file this answer.

J. H. MITCHELL,
Att'y for Def't.
C. S. SILVER, *Adm'r.*

Endorsed: Filed Aug. 15th, 1865. H. C. Coulson, clerk.

And pl'ff moves the court to strike out part of answers & & files motion, as follows, to wit:

Motion by pl'ffs atty's to strike out portions of defendants answers.

In the circuit court of the State of Oregon, for Multnomah county.

A. J. KNOTT, pl'tf,
vs.
A. L. MARSHALL, def't.

The pl'tf after answer filed comes and moves to strike from the answer of said def't all after the first paragraph thereof, except the

prayer concluding the same, because the said part moves to be stricken out is irrelevant; and pl'ff further moves that all of the answer of C. S. Silver, from and after the 17th line of said answer to the last paragraph, may be stricken out, because the said part moved to be stricken out is irrelevant.

By W. STRONG & A. HOLBROOK,
Pl'ff Att'ys.

Endorsed: Filed Aug. 19, 1865. H. C. Coulson, clerk. By Quincey A. Brooks, deputy.

And by agreement of parties this cause is continued till next term of this court.

(Signed) ERASMUS D. SHATTUCK, *Judge.*

11 And afterwards, at a February term of the circuit court of the State of Oregon, for the county of Multnomah, begun and held at the court-house in the city of Portland, in said county, on Monday, the twelfth (12) day of February, A. D. 1866, before the Hon. Erasmus D. Shattuck, sole judge thereof, to wit: on the seventh (7) day of March, A. D. 1866, being the nineteenth (19) judicial day of said term, the following proceedings were had, to wit:

Comes the plaintiffs, by Holbrook & Strong, his att'ys, and said defendant appearing by Mitchell, Dolph & Upton, his att'ys, and the motion for leave to amend answer hereto filed in this cause is overruled, and by leave of court, plaintiff files reply as follows, to wit:

Reply of plaintiff.

In the circuit court of the State of Oregon, for the Multnomah.

ANDREW J. KNOTT, plaintiff,
vs.
A. L. MARSHALL & SILVERS, adm'r of Caruthers, defendant.

Plaintiff for reply to answers of defendants says, that it is not true and denies that the said Finice Caruthers at the time of his decease, or ever was the owner in fee of said premises, or any part thereof, or had an estate of inheritance, or any other estate therein,
12 or died seized of the same or any part thereof. He denies that the said estate is the owner in fee of said premises or had an estate of inheritance, or any other estate therein, or died seized of the same, or any part thereof. He denies that the said estate is the owner in fee of said premises, or hath any estate therein. He denies that the said Marshall or the said Silver—as administrator or otherwise, or either of them, is entitled to the possession of said premises, or any part thereof, or have any right therein. He denies that the said Finice Caruthers, in his life time, while in possession of said premises, holding them under

color of title or otherwise, made permanent improvements of the value of $3,000, or any other or greater value, greater or less. He denies that the said Caruthers made any permanent improvements upon said premises in good faith, or made any permanent improvements upon said premises while holding adversely to plaintiff's claim.

A. HOLBROOK & WM. STRONG,
Pl'ffs Att'ys.

STATE OF OREGON, *County of Multnomah, ss:*

I, Andrew J. Knott, being duly sworn say, that I am the plaintiff in the above-entitled action, and I know the contents of the foregoing reply, and the same is true, as I verily believe.

A. J. KNOTT.

Subscribed and sworn to before me, this 3d day of March, 1866.
[SEAL.] JOHN CATLIN,
Notary Public for Oregon.

13 Endorsed: Filed March 7th, 1866. H. C. Coulson, clerk.

And afterwards, to wit: on the 9th day of March, A. D. 1866, defendants made tender of judgment, as follows, to wit:

Tender of judgment by defendants Silver.

In the circuit court of the State of Oregon, for the county of Multnomah.

R. J. LADD, pl'ff,
vs.
A. L. MARSHALL, def't.

A. J. KNOTT, pl'ff,
vs.
A. L. MARSHALL, def't.

C. S. Silver, administrator of the estate of Finice Caruthers, dec'd, who has been admitted by the court to defend the above-entitled actions, and who is plaintiff in a chancery suit of C. S. Silver, adm'r, *vs.* Ladd & Knott, now pending upon the chancery side of this court, involving the title to the same property in controversy in the above-entitled action, hereby tenders to the plaintiffs in these actions a judgment for the possession of the lands respectively claimed by them upon the condition and with the understanding that execution shall be stayed untill the final determination upon
14 the merits in the court of final resort to which either party may appeal, the same of the suit of C. S. Silver, adm'r, *vs.* Ladd & Knott aforesaid, and in the event that the final decree in said chancery suit should be against the plaintiff then the plaintiff in

these actions to have execution for possession, and also shall be entitled to have a jury to assess any damages to which they may be entitled for detention of premises, and in the event that such final decree should be in favor of the plaintiff Silver in said chancery suit, then the judgments for possession to be set aside.

UPTON, MITCHELL, DOLPH & SMITH,
Attorneys for Silver, Adm'r.

March 9th, 1866.

Endorsed: Filed March 9th, 1866. H. C. Coulson, clerk.

And at the term aforesaid, of the court aforesaid, before the judge aforesaid, and on Saturday, the seventeenth (17) day of March, A. D. 1866, being the twenty-fourth (24) judicial day of said term, this cause, among others, was continued till the next term of said court.

Be it remembered, that at a term of the circuit court of the State of Oregon, for the county of Multnomah, begun and held at
15 the court-house, in the city of Portland, in said county, on Monday, the eleventh (11) day of June, A. D. 1866, (being the time fixed by law for holding a term of said court,) before the Hon. Erasmus D. Shattuck, sole judge thereof, to wit: on the fourteenth (14) day of June, A. D. 1866, the following stipulation was filed with the clerk of said court, to wit:

Stipulation by parties.

In the circuit court of the State of Oregon for the county of Multnomah.

A. J. KNOTT, pl'ft,
vs.
A. L. MARSHALL & C. S. SILVER, deft's.

It is stipulated and agreed that judgment shall be entered in this action in accordance with the verdict in the action of R. J. Ladd *vs.* same defendants, with the right of the defendants to appeal to the supreme court, and to have the benefit of raising every question raised in said action of R. J. Ladd *vs.* same defendants, this day tried in this court, record to be made up containing same exceptions as in the above action.

A. HOLBROOK, WM. STRONG, J. H. REED,
Atty's for Plf't.
UPTON & MITCHELL,
Attorneys for Defendants.

June 14, 1866.
Endorsed: Filed June 14, 1866, H. C. Coulson, clerk.

16 And at the time aforesaid, at the court aforesaid, before the judge aforesaid, and on Wednesday, the twenty-seventh (27) day of June, A. D. 1866, being the fifteenth (15) judicial day of said term, the following proceedings in the above-entitled cause were had by said court, to wit:

On this day comes the plaintiff, by Strong and Holbrook, his atty's, an said defendants appearing by Mitchell & Dolph, Upton & Smith. their atty's, and the parties being ready for trial in pursuance of stipulation of parties heretofore filed herein, comes W. F. Wilcox, W. Dalton, G. W. Ford, I. J. Hesling, D. F. Harington, W. Mason, P. C. Williams, I. H. Stallard, Isaac Williams, Lloyd Brooke, John B. Garison, and Jacob Fickle, twelve good and lawful men of the county, duly summoned, empannelled, sworn and accepted by the parties, and the jury having heard the proofs and allegations of the parties, the argument of counsel, and the instructions of the court, submit their verdict as follows, to wit:

Verdict of jury.

We, the jury in the above-entitled action, find for the plaintiffs, that he is the owner of the land in the complaint described as of an estate in fee simple, and entitled to the possession thereof, and we assess his damages at the sum of one cent.

L. BROOKE, *Foreman.*

And defendants, by their said atty's, move the court for a stay of proceedings herein, and file motion as follows, to wit:

17 *Motion to stay proceedings by defendant.*

In the circuit court of the State of Oregon, for Multnomah county.

A. J. KNOTT, plaintiff,
vs.
C. S. SILVER, adm'r of the estate of Finice Caruthers, dec'd, def't.

And now comes the said defendant and moves the court for a stay of execution in this cause until the final determination of the suit in equity, mentioned in the affidavits filed herein. And that all further proceedings herein be stayed, and that the judgment to be rendered herein be subject to and abide the event of said suit in equity.

And the said defendant offers in support of this motion the affidavits by him hereinbefore filed.

MITCHELL & UPTON,
Deft's Att'y.

Endorsed: Filed June 18, 1866. H. C. Coulson, clerk.

Which said motion the court overruled, and that plaintiff is entitled to judgment on the verdict of the jury.

Order for recovery of premises.

It is therefore ordered and adjudged by the court, that said plaintiff do have and recover of, and from said defendants, the possession of the following-described property, to wit: The lot numbered
18 two of section nine, and the lots numbered eight and nine of section ten, in township one, south of range one, east of the Willamette meridian, as described upon the government plats and surveys of the public lands in Oregon, the said lots containing one hundred and forty-seven and 50-100 of an acre, situated in the county of Multnomah, State of Oregon, and have and recover of and from the said defendants the said sum of one cent damages; also the costs and disbursements herein to be taxed, and have execution issue therefor.

(Signed) ERASMUS D. SHATTUCK, *Judge.*

And afterwards, to wit, on the twentieth (20) day of July, A. D. 1866, the following notice of appeal and undertaking on appeal were filed in the office of the clerk of said court, to wit:

Notice of appeal.

In the circuit court of the State of Oregon, for Multnomah county.

A. J. KNOTT, plaintiff,
vs.
C. S. SILVER, adm'r of the estate of Finice Caruthers, dec'd, and A. L. Marshall, defendant.

To the above named, A. J. Knott, plaintiff, and Wm. Strong,
19 pl'ft's att'y, you will please take notice that the said defendants, C. S. Silver, administrator, and A. L. Marshall, as aforesaid, appeal from the judgment rendered in said court at the June term, 1866, thereof, in the above-entitled cause, to the supreme court of the said State, said appeal is taken from the whole of said judgment.

Yours, respectfully,
W. W. UPTON, *Defendant's Attorney.*

July 20, 1866.

I, W. W. Upton, an attorney of said circuit and supreme courts, hereby certify that I have examined the said judgment rendered in said circuit court in the above-entitled cause, and that the same is substantially erroneous in the following particulars, to wit:

The court erred in refusing said defendant's motion for a stay of proceedings; in refusing to permit the defendant to file the amended answer presented by def't; in setting aside the first verdict found in this case; in permitting the case to be tried a second time after it had once been fully submitted to a jury; in refusing to permit def't to

prove that the premises in dispute were in possession of Caruthers, administrator at the time pl'ft attempted to purchase it from
20 the United States; in refusing to permit def't to prove that the United States had no title at the time of issuing the patent; in permitting plft to read the patent without showing that the United States had title in refusing to permit def't to introduce other competent testimony offered by def't; in permitting plaintiff to introduce copies of letters without first showing the validity and execution of the originals; in permitting pl'ft to introduce copies of letters of officers without showing what proceedings were pending before such officers, and in refusing to instruct the jury in matters of law requested by def't, and in giving to the jury the instructions that were given in matters of law.

W. W. UPTON, *Def't Attorney.*

Sheriff's return.

STATE OF OREGON, *Multonomah County ss:*

I hereby certify, that I served the within and foregoing notice of appeal and certificate on the within named plaintiffs this day, by delivering to Wm. Strong, esq., att'y of said plaintiffs, a true copy, duly certified thereof, personaly at his place of business in said county, on this 20 day of July, A. D. 1866.

JACOB STITZEL, *Sherrif.*
By F. M. ARNOLD, *Deputy.*

Sheriff's fees, $2 75.

Endorsed: Filed July 20, 1866. H. C. Coulson, clerk.

21 *Undertaken on appeal.*

In the circuit court of the State of Oregon, for Multnomah county.

A. J. KNOTT, plaintiff,
vs.
C. S. SILVERS, adm'r of the estate of Finice Caruthers, dec'd, and A. L. Marshall, defendants.

Whereas, the above-named defendants, C. S. Silver and A. L. Marshall, has appealed from the judgment rendered in said court at the June term, 1866, thereof, in the above-entitled cause to the supreme court of said State, now we, C. S. Silvers, adm'r as aforesaid, and A. L. Marshall, principal, and C. Hay and Jacob Cline, as sureties, hereby undertake and agree, that the said C. S. Silver and A. L. Marshall, appellants, will pay all damages, costs, and disbursements which may be awarded against them on said appeal; and we further undertake and agree. in the sum of one thousand dollars, that during the possession of the property described in the complaint in

said cause by the said appellants, they will not commit, or suffer to be committed, any waste thereon, and that if the said judgment, or any part thereof be affirmed, the appellants will pay the value of the use and occupation of such property, so far as affirmed, from
22 the time of the said appeal untill the delivery of the possession thereof, not exceeding the said sum of one thousand dollars.

In witness whereof, we have hereunto set our hands and seals, this 20th day of July, 186 .

[SEAL.] S. S. GILVER.
[SEAL.] A. L. MARSHALL.
[SEAL.] C. HAY.
[SEAL.] JACOB CLINE.

STATE OF OREGON, *County of Multnomah, ss:*

We, C. Hay and Jacob Cline, being duly sworn, each for himself, depose and say: I am a resident within said State and county, and that I am worth two thousand dollars over all debts and liabilities, and property exempt from execution.

C. HAY.
JCOB CLINE.

Subscribed and sworn to before me, July 20, 1866.

H. C. COULSON, *Clerk.*
By ED. BARSTOW, *Deputy.*

Endorsed: Approved and filed July 20, 1866. H. C. Coulson, clerk. by Ed. Barstow, deputy.

23 Bill of disbursements and costs taxed in above entitled suit, to wit:

Clerk's fees	$25 15
Trial fees	12 00
Att'ys fee and stamp	10 50
Sheriffs fees	10 35
This transcript and certf	14 00
	$72 00

24 STATE OF OREGON, *Multnomah County, ss:*

I, H. C. Coulson, clerk of the circuit court of the State of Oregon, for the county of Multnomah, do hereby certify that the foregoing transcript has been by me compared with the original, and that it is a correct transcript therefrom, and of the whole of such original pleading, journal entries, and judgment, as the same appears of record and on file at my office, and in my custody.

In testimony whereof, I have hereunto set my hand and affixed the seal of said court, this 3d day of August, 1866.

[SEAL.] H. C. COULSON, *Clerk.*

25 At a supreme court, begun and held at the court-house in the city of Salem, in and for the State of Oregon, on Monday, the third day of September, in the year one thousand eight hundred and sixty-six, before the Hons. E. D. Shattuck, chief justice, R. E. Stratton, P. P. Prim, R. P. Boise, and J. G. Wilson, associate justice, the following proceedings were had, Friday, the 23d day:

A. J. KNOTT, respondent,
vs.
C. S. SILVER, administrator of the estate of Finice Caruthers, deceased, and A. L. Marshall, appellants. } Multnomah.

This day, came W. W. Upton and J. H. Mitchell, esq., of counsel for appellants, and Wm. Strong, of counsel for respondents, and after argument by said counsel upon the errors assigned in the record and proceedings in the court below, it is considered by the court that there is not error as alleged. It is therefore ordered and adjudged by
26 the court, that the judgment in the court below rendered, be in all things affirmed, and that the respondent have and recover and from the appellants, the possession of the premises in complaint described, to wit; The lot numbered two of section nine, and the lots numbered eight and nine of section ten, in township one, south of range one, east of the Williamette meredian, as described upon the government plats and surveys of the public lands in Oregon, said lots containing one hundred and forty-seven and 50-100 acres, situated in the county of Multnomah, State of Oregon, and the sum of one cent damages, and have and recover of and against the appellants, and of and against C. Hay and Jacob Cline, sureties in appeal, the sum of seventy-two dollars costs and disbursements in the court below, and the further sum of twenty-six 75-100 dollars costs and disbursements in this court, and that this cause be remanded to the court below for further proceedings herein as by law provided.

27 In the supreme court of the State of Oregon.

A. J. KNOTT, resp. in error,
vs.
A. L. MARSHALL, *et al.* defts. in error.

To A. J. Knott, resp. in error:

You are notified that we take a writ of error in the above-entitled action to the Supreme Court of the United States, for the reasons contained in the following certificate and assignment of error.

MITCHELL & DOLPH,
Attorneys for Def'ts in Error.

I, J. H. Mitchell, an attorney of the supreme court of the State of Oregon, hereby certify that I have examined the judgment and proceedings in this action and the same are erroneous, and its judgment should be reversed, for the following reasons:

1st. The court erred in holding that there was not error in the judgment and proceedings of the court below in the several respects as alleged in assignment of errors.

28 2d. The judgment should have been in favor of the def'ts in error.

Oct. 8th, 1866.

J. H. MITCHELL.

Endorsed:

In Supreme Court. A. J. Knott, resp. in error, *vs.* A. L. Marshall, *et al.*, def'ts in error. Notice of a writ of error to Supreme Court of U. S.

29 In the supreme court of the State of Oregon.

ANDREW J. KNOTT, respondent in error,
vs.
A. L. MARSHALL, AND C. S. SILVER, administrator of the estate of Finice Caruthers, deceased, appellants and plaintiffs in error.

UNITED STATES OF AMERICA, *ss:*

To Andrew J. Knott, greeting:

You are hereby cited and admonished to be and appear in the Supreme Court of the United States on the first day of the next regular term thereof, pursuant to a writ of error from a judgment of the supreme court of the State of Oregon, wherein A. L. Marshall, and C. S. Silver, administrator of the estate of Finice Caruthers, are appellants, and you are respondent, in an action to recover the possession of real property rendered at the September term, 1866, of said court, to show cause, if any there be, why the said judgment should not be corrected and reversed, and speedy justice be

30 done to the parties in that behalf.

Witness, the Honorable Erasmus D. Shattuck, Chief Justice of the supreme court of the State of Oregon, this 8th day of October, A. D. 1866.

ERASMUS D. SHATTUCK,
Chief Justice.

STATE OF OREGON, *County of Multnomah, ss:*

I, Jacob Stitzel, sheriff of Multnomah county, State of Oregon, hereby certify that I served the

STATE OF OREGON, *County of Multnomah, ss:*

I, A. L. Marshall, being duly sworn say, that I served the within citation, together with the notice and assignment of errors attached, upon the within named Andrew J. Knott, respondent, by delivering

to him personally, true certified copies thereof, in Multnomah county, State of Oregon, this 9th day of October, A. D. 1866.

A. L. MARSHALL.

Subscribed and sworn to before me, this 9th day of Oct., A. D. 1866.

Witness my hand and notarial seal.

[SEAL.] CYRUS A. DOLPH,

Notary Public in and for said County and State.

Filed in the Supreme Court, Oct. 9th, 1866. R. Williams, clerk.

Endorsed:

In the Supreme Court. A. J. Knott, resp. in error, *vs.* A. L. Marshall, & C. S. Silver, adm'r, def'ts in error. Citation on writ of error to Supreme Court of the United States.

31 In the Supreme Court of the United States.

ANDREW J. KNOTT, respondent in error,
vs.
A. L. MARSHALL AND C. S. SILVER, administrator of the estate of Finice Caruthers, dec'd, appellants and def'ts in error.

UNITED STATES OF AMERICA, *ss.:*

To the honorable the judges of the supreme court of the State of Oregon, in the name of the President of the United States:

Whereas, it is alleged that there is manifest error in the proceedings and judgment of the supreme court of the State of Oregon, in the action wherein Andrew J. Knott is respondent in error, and A. L. Marshall and C. S. Silver, administrator of the estate of Finice Caruthers, dec'd, are appellants, which judgment was rendered at the September term, A. D. 1866, of said court: You are, thereupon, commanded to cause to be transmitted, with this writ, and under the seal of said supreme court, to the Supreme Court

32 States, on or before the first day of the next thereof, an authenticated transcript of the record ment of errors, and citation for writs of error proceedings in the above-entitled action, to the end may be tried in said Supreme Court, and said errors of this writ make due return.

Witness, the Hon. Salmon P. Chase, Chief Justice Court of the United States, and the seal of the circ United States for the district of Oregon attached, October, A. D. 1866.

[SEAL.] R. WILCOX,

Clerk of the U. S. Circuit Court, Oregon.

Endorsed: Andrew J. Knott, respondent, *vs.* A. L. Marshall *et al.*, appellants. Writ of error.

Filed in the supreme court Oct. 9th, 1866. R. Williams, clerk.

1st. The court erred in holding that there was not error in the judgment and proceedings of the court below in the several respects as alleged in assignment of errors.

28 2d. The judgment should have been in favor of the def'ts in error.

Oct. 8th, 1866.

J. H. MITCHELL.

Endorsed:

In Supreme Court. A. J. Knott, resp. in error, *vs.* A. L. Marshall, *et al.*, def'ts in error. Notice of a writ of error to Supreme Court of U. S.

29 In the supreme court of the State of Oregon.

ANDREW J. KNOTT, respondent in error,
vs.
A. L. MARSHALL, AND C. S. SILVER, administrator of the estate of Finice Caruthers, deceased, appellants and plaintiffs in error.

UNITED STATES OF AMERICA, *ss:*

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30 done to the parties in that behalf.

Witness, the Honorable Erasmus D. Shattuck, Chief Justice of the supreme court of the State of Oregon, this 8th day of October, A. D. 1866.

ERASMUS D. SHATTUCK,
Chief Justice.

STATE OF OREGON, *County of Multnomah, ss:*

I, Jacob Stitzel, sheriff of Multnomah county, State of Oregon, hereby certify that I served the

STATE OF OREGON, *County of Multnomah, ss:*

I, A. L. Marshall, being duly sworn say, that I served the within citation, together with the notice and assignment of errors attached, upon the within named Andrew J. Knott, respondent, by delivering

to him personally, true certified copies thereof, in Multnomah county, State of Oregon, this 9th day of October, A. D. 1866.

A. L. MARSHALL.

Subscribed and sworn to before me, this 9th day of Oct., A. D. 1866.

Witness my hand and notarial seal.

[SEAL.] CYRUS A. DOLPH,

Notary Public in and for said County and State.

Filed in the Supreme Court, Oct. 9th, 1866. R. Williams, clerk.

Endorsed:

In the Supreme Court. A. J. Knott, resp. in error, *vs.* A. L. Marshall, & C. S. Silver, adm'r, def'ts in error. Citation on writ of error to Supreme Court of the United States.

31 In the Supreme Court of the United States.

ANDREW J. KNOTT, respondent in error,
vs.
A. L. MARSHALL AND C. S. SILVER, administrator of the estate of Finice Caruthers, dec'd, appellants and def'ts in error.

UNITED STATES OF AMERICA, *ss.:*

To the honorable the judges of the supreme court of the State of Oregon, in the name of the President of the United States:

Whereas, it is alleged that there is manifest error in the proceedings and judgment of the supreme court of the State of Oregon, in the action wherein Andrew J. Knott is respondent in error, and A. L. Marshall and C. S. Silver, administrator of the estate of Finice Caruthers, dec'd, are appellants, which judgment was rendered at the September term, A. D. 1866, of said court: You are, thereupon, commanded to cause to be transmitted, with this writ, and under the seal of said supreme court, to the Supreme Court of the United States, on or before the first day of the next regular term
32 thereof, an authenticated transcript of the record, an assignment of errors, and citation for writs of error, and all other proceedings in the above-entitled action, to the end that said action may be tried in said Supreme Court, and said errors corrected; and of this writ make due return.

Witness, the Hon. Salmon P. Chase, Chief Justice of the Supreme Court of the United States, and the seal of the circuit court of the United States for the district of Oregon attached, this 8th day of October, A. D. 1866.

[SEAL.] R. WILCOX,

Clerk of the U. S. Circuit Court, Oregon.

Endorsed: Andrew J. Knott, respondent, *vs.* A. L. Marshall *et al.*, appellants. Writ of error.

Filed in the supreme court Oct. 9th, 1866. R. Williams, clerk.

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29 In the supreme court of the State of Oregon.

ANDREW J. KNOTT, respondent in error,
vs.
A. L. MARSHALL, AND C. S. SILVER, administrator of the estate of Finice Caruthers, deceased, appellants and plaintiffs in error.

UNITED STATES OF AMERICA, *ss:*

To Andrew J. Knott, greeting:

You are hereby cited and admonished to be and appear in the Supreme Court of the United States on the first day of the next regular term thereof, pursuant to a writ of error from a judgment of the supreme court of the State of Oregon, wherein A. L. Marshall, and C. S. Silver, administrator of the estate of Finice Caruthers, are appellants, and you are respondent, in an action to recover the possession of real property rendered at the September term, 1866, of said court, to show cause, if any there be, why the said judgment should not be corrected and reversed, and speedy justice be

30 done to the parties in that behalf.

Witness, the Honorable Erasmus D. Shattuck, Chief Justice of the supreme court of the State of Oregon, this 8th day of October, A. D. 1866.

ERASMUS D. SHATTUCK,
Chief Justice.

STATE OF OREGON, *County of Multnomah, ss:*

I, Jacob Stitzel, sheriff of Multnomah county, State of Oregon, hereby certify that I served the

STATE OF OREGON, *County of Multnomah, ss:*

I, A. L. Marshall, being duly sworn say, that I served the within citation, together with the notice and assignment of errors attached, upon the within named Andrew J. Knott, respondent, by delivering

to him personally, true certified copies thereof, in Multnomah county, State of Oregon, this 9th day of October, A. D. 1866.

A. L. MARSHALL.

Subscribed and sworn to before me, this 9th day of Oct., A. D. 1866.

Witness my hand and notarial seal.

[SEAL.] CYRUS A. DOLPH,

Notary Public in and for said County and State.

Filed in the Supreme Court, Oct. 9th, 1866. R. Williams, clerk.

Endorsed:

In the Supreme Court. A. J. Knott, resp. in error, *vs.* A. L. Marshall, & C. S. Silver, adm'r, def'ts in error. Citation on writ of error to Supreme Court of the United States.

31 In the Supreme Court of the United States.

ANDREW J. KNOTT, respondent in error,
vs.
A. L. MARSHALL AND C. S. SILVER, administrator of the estate of Finice Caruthers, dec'd, appellants and def'ts in error.

UNITED STATES OF AMERICA, *ss.:*

To the honorable the judges of the supreme court of the State of Oregon, in the name of the President of the United States:

Whereas, it is alleged that there is manifest error in the proceedings and judgment of the supreme court of the State of Oregon, in the action wherein Andrew J. Knott is respondent in error, and A. L. Marshall and C. S. Silver, administrator of the estate of Finice Caruthers, dec'd, are appellants, which judgment was rendered at the September term, A. D. 1866, of said court: You are, thereupon, commanded to cause to be transmitted, with this writ, and under the seal of said supreme court, to the Supreme Court of the United States, on or before the first day of the next regular term
32 thereof, an authenticated transcript of the record, an assignment of errors, and citation for writs of error, and all other proceedings in the above-entitled action, to the end that said action may be tried in said Supreme Court, and said errors corrected; and of this writ make due return.

Witness, the Hon. Salmon P. Chase, Chief Justice of the Supreme Court of the United States, and the seal of the circuit court of the United States for the district of Oregon attached, this 8th day of October, A. D. 1866.

[SEAL.] R. WILCOX,

Clerk of the U. S. Circuit Court, Oregon.

Endorsed: Andrew J. Knott, respondent, *vs.* A. L. Marshall *et al.*, appellants. Writ of error.

Filed in the supreme court Oct. 9th, 1866. R. Williams, clerk.

33 In the supreme court of the State of Oregon.

ANDREW J. KNOTT, respondent in error,
vs.
A. L. MARSHALL AND C. S. SILVER, administrator of the estate of Finice Caruthers, deceased, appellants and plaintiffs in error.

Whereas, a writ of error has this day been issued in the above-entitled action for the purpose of removing the same to the Supreme Court of the United States: Thereupon we, the appellants and plaintiffs in error, A. L. Marshall and C. S. Silver, administrator of the estate of Finice Caruthers, dec'd, as principals, and Fred. Harbaugh and Thos. Stephens, both residents of the State of Oregon, as sureties, are held and firmly bound unto Andrew J. Knott, the respondent in error, in the full sum of three thousand dollars, lawful money, conditioned that the appellants and plaintiffs in error
34 shall prosecute their writ to effect, and answer all damages and costs if they fail to make their plea good.

Witness our hands and seals, this 8th day of October, A. D. 1866.

A. L. MARSHALL. [SEAL.]
Adm'r of Estate of F. Caruthers,
By W. B. FAIN, [SEAL.]
Agent and Att'y in Fact.
FREDERICK HARBAUGH. [SEAL.]
THOMAS STEPHENS. [SEAL.]

STATE OF OREGON, *County of Multnomah, ss:*

We, Fred. Harbaugh and Thos. Stephens, being each duly sworn, do each say that we are severally citizens and residents of Multnomah county, State of Oregon; that we are each freeholders and householders therein, and are each worth over three thousand dollars over and above all our debts and liabilities, and property exempt from execution.

FREDERICK HARBAUGH.
THOMAS STEPHENS.

Subscribed and sworn before me, this 8th day of October, 1866.
ERASMUS D. SHATTUCK,
Chief Justice of Supreme Court.

Endorsed:

In Supreme Court of the United States. A. J. Knott, resp. in error, *vs.* A. L. Marshall *et al.*, pl'ffs in error. Bond on writ of error to Supreme Court of the United States.

Filed in the supreme court Oct. 9th, 1866. R. Williams, clerk.

35 STATE OF OREGON, *County of Marion, ss:*

I, R. Williams, clerk of the supreme court of the State of Oregon, do hereby certify that the foregoing transcript has been by me com-

pared with the original, and that it is a correct transcript therefrom, and the whole of such original as the same appears of record and in my office, together with the original writ of error, bond on writ of error, citation on writ of error on appeal in this cause to the Supreme Court of the United States.

In testimony whereof, I have hereunto set my hand, and affixed the seal of said court, at Salem, the 8 day of November, 1866.

R. WILLIAMS,
Clerk.

Clerk's fees on trial	$11 75
Filing appeal papers and copies, with certificate	4 50
Transcript	17 00
	$33 25
Certificate and seal	1 00
	$34 25